

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HAKEEM EL BEY,

Defendant.

Docket No. 14 CR 447

Chicago, Illinois
July 22, 2015
9:36 AM

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE RICHARD A. POSNER

APPEARANCES:

For the Plaintiff:

MR. ZACHARY T. FARDON
United States Attorney
BY: MS. KATHRYN E. MALIZIA
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For the Defendant as
Standby Counsel:

JENNER & BLOCK LLP
BY: MR. GABRIEL A. FUENTES
MS. MONICA PINCIAK-MADDEN
353 North Clark Street
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ALSO PRESENT:

MS. SANDRA DENICHOLAS, Probation

Court Reporter:

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1 THE CLERK: 14 CR 447, USA versus Hakeem El-Bey,
2 for sentencing.

3 MS. MALIZIA: Good morning, your Honor. Kathryn
4 Malizia on behalf of the United States. I'm afraid we are
5 still without the defendant.

6 THE COURT: Beg your pardon?

7 MS. MALIZIA: We are still without the defendant,
8 your Honor. I have not seen him this morning. I don't know
9 if we want to give him a few more minutes. It could be
10 security.

11 THE COURT: Well, we will wait a few minutes. I
12 had asked a probation officer to visit him last week to
13 remind him about the session today, and he said he would show
14 up. And he even submitted one of his affidavits of truth in
15 which he --

16 MS. MALIZIA: I did see that, your Honor, yes.

17 THE COURT: Is there any -- I mean, could you give
18 him a call, or something?

19 MS. MALIZIA: Your Honor, I am --

20 THE COURT: I don't know what the procedure is,
21 never having --

22 MS. MALIZIA: I believe probation may have a
23 contact number for him. From what I understand, it may have
24 changed recently.

25 PROBATION OFFICER: I'm sorry?

1 MS. MALIZIA: Do you have a good contact number for
2 him?

3 PROBATION OFFICER: I believe I have a contact
4 number. Sandra DeNicholas from the Department of Probation.

5 THE COURT: I'm sorry, do you want to come up to
6 the --

7 PROBATION OFFICER: Sure. Sandra DeNicholas from
8 the Department of Probation.

9 THE COURT: Hi.

10 PROBATION OFFICER: I believe I have a working
11 number for him. He has never answered when I've called.
12 I've left messages, and he hasn't returned them. But we
13 could try that. Or I'm wondering if he is trying to find
14 which courtroom, for some reason, if he didn't get notice.
15 But I don't know.

16 MS. MALIZIA: In his most recent filing, he did say
17 he would be appearing in this particular courtroom.

18 PROBATION OFFICER: Oh, okay.

19 MS. MALIZIA: So I think he is aware.

20 PROBATION OFFICER: Then that's not the issue.

21 THE COURT: Were you the officer who visited him?

22 PROBATION OFFICER: I am not, your Honor. I
23 arranged for one of my colleagues to go. And then I spoke
24 with that colleague that met with him in person, and he
25 verified that he had all the documents. We gave him another

1 copy of all the documents and then confirmed with him that he
2 knew the court date and time. And he affirmed that he would
3 be here on time. He specifically said that.

4 THE COURT: Well, what would you suggest I do?

5 PROBATION OFFICER: I can step outside and try and
6 call him?

7 THE COURT: I think that would be a good idea.

8 PROBATION OFFICER: Okay.

9 THE COURT: Yeah, great. Thanks.

10 MR. FUENTES: Good morning, Judge.

11 THE COURT: Hi, Mr. Fuentes.

12 MR. FUENTES: May the record reflect that Gabe
13 Fuentes and Monica Pinciak-Madden from Jenner and Block are
14 here as standby counsel.

15 THE COURT: Thank you.

16 MR. FUENTES: Thank you.

17 THE COURT: Pleased to have you.

18 PROBATION OFFICER: There was no answer at his home
19 telephone number, your Honor.

20 THE COURT: Well, it could be a good sign or a bad
21 sign. Is there any number that Mr. El Bey would know to call
22 if he is stuck somewhere or his car doesn't work, or
23 something?

24 PROBATION OFFICER: Your Honor, he does have my
25 telephone number. And I receive e-mails when I have a

1 voicemail to my telephone. And so I haven't received any
2 messages this morning.

3 THE COURT: Right. So he does have a way of
4 reaching you?

5 PROBATION OFFICER: Yes. And I believe he has the
6 number to the pretrial services office as well. And I
7 haven't received any messages from them.

8 THE COURT: Okay. Well, we'll just wait a few more
9 minutes. Mr. Fuentes, have you been in touch with Mr. El Bey
10 at all?

11 MR. FUENTES: I have not, your Honor, other than by
12 mail.

13 THE COURT: Ms. Malizia, do you have any
14 suggestions as to what we should do?

15 MS. MALIZIA: Your Honor, unless he is running very
16 late, which is still a possibility, I mean, there may be a
17 delay on the trains, in a situation like this, it's not
18 unusual for the government to request a bench warrant,
19 especially given that Mr. El Bey told the probation officer
20 in person last week that he intended to appear today. And
21 based on his last filing, he knew the time and location of
22 this hearing and said he planned to appear. It could be that
23 there was an emergency. But the fact that he is not
24 answering his phone and there is really no way for anybody to
25 get in touch with him, it is within the Court's discretion to

1 issue a warrant.

2 Alternatively, we could set another date, if not
3 for the sentencing itself, at least to secure his appearance
4 here and find out what happened. But it's really -- it's up
5 to your Honor.

6 THE COURT: I mean, he did show up promptly for
7 the first --

8 MS. MALIZIA: He had -- I mean, he has a great
9 track record of being here. It could be that there was an
10 emergency. I mean, it could be any number of things. On the
11 other hand, we have no way of getting in touch with him at
12 the moment, other than physically showing up at his home.

13 THE COURT: Ms. DeNicholas, do you have any
14 suggestions?

15 PROBATION OFFICER: I don't, your Honor. I was
16 actually just communicating with some other officers to see
17 if there was any other suggestions. But because he
18 doesn't -- he claims to not receive his mail, we have that
19 issue. He doesn't seem to respond to my phone calls. You
20 know, I don't know anyone in the courtroom that has success
21 in getting in touch with him. If he has a great track record
22 of showing up for other -- I've only been to one sentencing
23 hearing date where he has shown. But if he has shown for
24 others, maybe there is something -- you know, an emergency
25 going on, or he is just significantly late, I don't know.

1 But I don't know what more we can do other than --

2 THE COURT: Right.

3 PROBATION OFFICER: -- you know, serve him in
4 person and remind him, which is obviously just time-consuming
5 and --

6 THE COURT: Well, on the positive side is the fact
7 that he showed up for all -- during the trial and before the
8 trial, the hearing before the trial, he showed up very
9 prompt. So that's the positive side. He did submit that
10 rather strange affidavit of truth about the undead.

11 MS. MALIZIA: Yes, your Honor.

12 THE COURT: You wonder a little. So, I mean, I'm a
13 little reluctant to issue a bench warrant without, of course,
14 knowing the circumstances. And was it your alternative
15 suggestion had been to schedule another hearing or --

16 MS. MALIZIA: Your Honor, again, we could set
17 another date, hope he shows up. But, again -- or in the
18 meantime, at least, if he reaches out to probation hopefully
19 with an explanation. Alternatively, I mean, we could give
20 him a little bit more time. He is not that late. If he
21 doesn't show up at all, we could -- your Honor could consider
22 issuing a bench warrant. Again, it's unusual that there is
23 no way for anyone in this courtroom to get in touch with him.
24 And that's why I wonder whether it would be productive to
25 continue to reset this hearing.

1 PROBATION OFFICER: That was going to be my
2 thought, your Honor, is I would not suggest that a bench
3 warrant would be something typical in this circumstance, when
4 he has shown before.

5 THE COURT: Right.

6 PROBATION OFFICER: That seems a little harsh. But
7 I don't know any other way of, you know, getting him here for
8 sure. And it sounds like he was prepared to go forward based
9 on his filing. So to set another court date and have him not
10 show, to then set another court date possibly for sentencing
11 seems to be a lot of wasted time by the court, but --

12 THE COURT: Well, why don't we wait until 10:00,
13 see if anything -- one of the problems is I have a conference
14 in my court at 11:00. So I can't remain indefinitely or
15 reschedule it for today. So we'll just wait another ten
16 minutes; and then if he shows up, I'll come down. But I
17 won't be able -- I don't think I will have time for this
18 sentencing. Well, we'll just wait for ten minutes.

19 (Recess at 9:52 AM; Resumed at 10:21 AM.)

20 THE COURT: I'm going to issue a bench warrant.

21 MS. MALIZIA: Your Honor, before you do that, if I
22 may make a suggestion?

23 THE COURT: Of course.

24 MS. MALIZIA: You're, of course, well within your
25 authority to issue a bench warrant. In discussing this with

1 the agents and probation, in the alternative, you could set
2 the hearing over for a couple days and one of our agents
3 could go to his home, maybe admonish him that, if he did not
4 show up for the new sentencing date, a bench warrant would
5 issue.

6 I think we are all in agreement that it is very
7 unusual for him not to make a court appearance, and there may
8 be an innocent explanation; or, of course your Honor is well
9 within your authority to issue a warrant today. The marshals
10 will execute it, and hopefully he will be here very soon.

11 THE COURT: Okay. Thank you, Ms. Malizia.
12 Ms. DeNicholas, did you want to add something?

13 PROBATION OFFICER: Your Honor, I think that the
14 assistant has a great suggestion because of his positive
15 track record of being here. If we could have one of the
16 agents go out to his house, that could be -- and warn him
17 that a warrant will issue should he not appear, absent any
18 innocent reason for not being here, then he would at least
19 know what's ahead.

20 THE COURT: Yeah. No, I'm going to issue the bench
21 warrant and I'm -- issue the bench warrant today, but I don't
22 want it executed until tomorrow morning.

23 MS. MALIZIA: All right. Your Honor, we will, of
24 course, notify the court if we hear from him in the meantime.

25 THE COURT: I appreciate that. Anything further?

1 MS. MALIZIA: Nothing from the government.

2 THE COURT: Okay.

3 MS. MALIZIA: Thank you, Judge.

4 THE COURT: Well, thank you very much. Sorry to
5 keep everybody here.

6 (Which were all the proceedings heard.)

7 CERTIFICATE

8 I certify that the foregoing is a correct transcript
9 from the record of proceedings in the above-entitled matter.

10 /s/Sandra M. Tennis

March 10, 2016

11 _____
12 Sandra M. Tennis
13 Official Court Reporter

Date

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